~~EXPLOITERS~~
FRIENDS
of ANIMALS

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VIA E-Mail (*W8GreenDiamondEISHCP@fws.gov*)

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Re: Green Diamond Resource Company Proposed Forest Habitat Conservation Plan and Draft Environmental Impact Statement (FWS-R8-ES-2018-N082-FXES11140800000-189-FF08E00000)

Dear Ms. Norris,

Friends of Animals[1] submits these comments in response to the application submitted by Green Diamond Resource Company of Korbel, California ("Green Diamond") for issuance of an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act (ESA). Green Diamond is applying for a new 50-year incidental take permit covering four species to replace an existing 30-year permit covering only the northern spotted owl (*Strix occidentalis caurina*). The four species covered by the proposed permit are the northern spotted owl, fisher (*Pekania pennanti*), Sonoma tree vole (*Arborimus pomo*), and red tree vole (*Arborimus longicaudus*). The Action Area evaluated in the draft environmental impact statement (EIS) for the proposed forest habitat conservation plan (FHCP) encompasses approximately 1,034,623 acres of timberlands in Humboldt and Del Norte counties, California. *See* Draft Environmental Impact Statement for the Green Diamond Forest Habitat Conservation Plan, U.S. Fish and Wildlife Service (July 2018) (hereinafter, "DEIS"), at 1-8. Of this land, 357,412 acres are commercial timberlands currently owned by Green Diamond, and 339,670 acres are non-Green Diamond-owned lands from which future land acquisitions could be made. *Id.* Green Diamond is additionally applying for a permit under the Migratory Bird Treaty Act to implement experimental and ongoing removal of barred owls (*Strix varia*) as part of its FHCP.

The current habitat conservation that Green Diamond seeks to replace (the "NSO HCP") covers only northern spotted owls (also referred to as "NSOs") and encompasses 365,152

[1] Friends of Animals is a non-profit international advocacy organization incorporated in the state of New York since 1957. FoA has nearly 200,000 members worldwide. FoA and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals.

acres of Green Diamond's California land holdings and is set to expire in 2022. Though the NSO HCP, as amended, allows Green Diamond to take 58 northern spotted owls pairs in total over the course of 30 years, Green Diamond has already taken 95% of this total maximum allowance. Green Diamond now seeks to replace the NSO HCP with a new multi-species FHCP that will be valid for 50 years.

As explained in further detail below, there are several issues with the draft FHCP from both a practical and legal standpoint: (1) the FHCP and DEIS improperly rely on barred owl removal as a long-term conservation measure to benefit the northern spotted owl; (2) the FHCP and DEIS fail to demonstrate compliance with the Migratory Bird Treaty Act and its implementing regulations; (3) the FHCP fails to minimize and mitigate the adverse impacts of incidental take to northern spotted owls; (4) the DEIS fails to accurately describe and analyze the incidental takes authorized by the FHCP; and (5) the FHCP's monitoring requirements are insufficient to ensure that the survival and recovery of northern spotted owls is not being appreciably reduced in the Action Area.

A. Background: Northern Spotted Owl Status and the Barred Owl Removal Experiment.

The northern spotted owl population in the United States has been in decline for more than forty years. There is no dispute among scientists that habitat destruction, particularly logging of old growth forests in California, Oregon, and Washington, is the primary reason for the decline of northern spotted owls. However, the question of how to protect and conserve northern spotted owls has been a highly controversial and political issue.

In 1992, approximately 6.9 million acres of forest were designated as habitat critical to the recovery and survival of the northern spotted owl, to the chagrin of the timber industry. Even though many ecologists and biological scientists believed that the 1992 designation was insufficient to protect the northern spotted owl, FWS's subsequent 2008 Recovery Plan for the northern spotted owl reduced the amount of designated critical habitat by approximately 1,574,000 acres. Unsurprisingly, the Department of the Interior Inspector General's Office determined that the integrity of the decision-making process for the 2008 recovery plan was potentially jeopardized by improper political influence. On September 1, 2010, the U.S. District Court for the District of Columbia remanded the 2008 recovery plan and critical habitat designation for further consideration. *Carpenters Indus. Council v. Salazar*, 734 F. Supp. 2d 126, 134 (D.D.C. 2010). Around the same time, in 2007, Green Diamond agreed to amend its NSO HCP to include a research plan for the lethal removal of barred owls from three treatment areas on its private timberlands. Green Diamond began implementing this experiment in 2009 and continues to do so today.

On June 28, 2011, FWS adopted a final Revised Recovery Plan for the Northern Spotted Owl (hereinafter, "2011 Recovery Plan"). The 2011 Recovery Plan identified past habitat loss and current habitat loss as threats to northern spotted owl recovery but also included a new threat – competition from barred owls. The 2011 Recovery Plan contained 33

proposed actions to protect northern spotted owls, including habitat conservation and further study of the impact of barred owls on northern spotted owls. The Plan acknowledged that the presence of barred owls actually increases the need for additional habitat protection, and it recommended conserving more unoccupied northern spotted owl sites and high-value spotted owl habitat on all lands as a result.

In 2013, FWS essentially scaled up the Green Diamond experiment when it approved a federal experiment to study the effect of barred owl presence on northern spotted owl populations by lethally removing approximately 3,600 barred owls in four study areas across California, Oregon, and Washington. The implementation of this barred owl removal experiment is expected to cost around four million dollars and is still ongoing. When FWS approved the barred owl removal experiment, it stated that long-term northern spotted owl conservation strategies following the experiment were speculative and not reasonably foreseeable.

Now, before the federal barred owl removal experiment has even yielded any conclusive data or agency-sanctioned management strategies, FWS and Green Diamond are seeking to approve a 50-year-long barred owl removal plan as the primary conservation mechanism within Green Diamond's new FHCP, which will replace its current habitat-based NSO HCP.

B. Legal Background.

1. The Endangered Species Act.

The purpose of the Endangered Species Act (ESA) is to conserve threatened and endangered species and the ecosystems upon which they depend. The Supreme Court recognized that by enacting the ESA, Congress "intended endangered species to be afforded the highest priorities." *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978). The fundamental method by which the ESA protects endangered species is its aggressive prohibition on the take of any endangered species within the United States. Defined broadly, the term "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19).

In section 10(a)(1)(B), Congress provided a narrow exception to the ESA's prohibition on takes by allowing FWS to issue permits authorizing the incidental taking of a listed species "if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." 16 U.S.C. § 1539(a)(1)(B). Applicants wishing to obtain an incidental take permit (ITP) must submit a proposed HCP to FWS that specifies: (1) the impact which will likely result from the taking; (2) what steps the applicant will take to monitor, minimize, and mitigate such impacts, the available funding to implement such steps, and the procedures to be used to deal with unforeseen circumstances; (3) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (4) other measures that FWS may require as being necessary or appropriate for purposes of the plan. 50 C.F.R. § 17.32(b)(1)(iii)(C); 16 U.S.C. § 1539(a)(2)(A).

FWS may not issue an incidental take permit unless it finds that:

(A) The taking will be incidental;
(B) The applicant will, to the maximum extent practicable, **minimize and mitigate** the impacts of such takings;
(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;
(D) The taking **will not appreciably reduce the likelihood of the survival and recovery** of the species in the wild;
(E) The measures, if any, required under [16 U.S.C. § 1539(a)(2)(A)(iv) and 50 C.F.R. § 17.32(b)(1)(iii)(D)] will be met; and
(F) [FWS] has received such other assurances as he or she may require that the plan will be implemented.

50 C.F.R. § 17.32 (emphasis added); 16 U.S.C. § 1539(a)(2)(B).

The ESA requires that the permit shall contain such terms and conditions as the Secretary of the Interior, or FWS as his delegate, deems necessary or appropriate to carry out the purposes of the foregoing paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with. 16 U.S.C. § 1539(a)(2)(B)(v). The ESA also requires that the Secretary, or FWS, "shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit." *Id.* § 1539(a)(2)(C).

Accordingly, an incidental take permit should not be issued if a proposed habitat conservation plan fails to minimize and mitigate the impacts of the proposed takings to the maximum extent practicable. Likewise, an incidental take permit should not be issued if a proposed habitat conservation plan fails to provide sufficient monitoring and reporting requirements to ensure that this minimization and mitigation of harm is being achieved and that the takings will not reduce the likelihood of survival and recovery of the species.

2. The National Environmental Policy Act.

The fundamental purpose of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, is to improve the decision-making of federal agencies by requiring an analysis of the environmental impacts of a proposed action and an exploration of alternatives to that action that would reduce or eliminate such impacts. The primary vehicle for this analysis is an Environmental Impact Statement (EIS). An EIS includes a detailed analysis of federal actions that significantly affect the quality of the human environment, including "(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action." 42 U.S.C. § 4332(2)(C).

NEPA regulations require FWS to consider the cumulative effects of its proposed actions which "result[ ] from the incremental impact of the action when added to other past,

present, and reasonably foreseeable future actions" with the goal of making sure that "individually minor but collectively significant" actions are properly analyzed. 40 C.F.R. § 1508.7. The issuance of an ESA incidental take permit is a major agency action subject to NEPA compliance.

3. The Migratory Bird Treaty Act.

The Migratory Bird Treaty Act (MBTA) makes it unlawful to take any migratory bird covered by the Act "except as permitted by regulations made as" provided in the Act. 16 U.S.C. § 703(a). "[T]he Secretary of the Interior is authorized and directed . . . to determine when . . . it is compatible with the terms of the conventions to allow . . . taking . . . and to adopt suitable regulations permitting and governing the same." *Id.* § 704(a). Those regulations are "[s]ubject to the provisions and in order to carry out the purposes of the conventions." *Id.* Both the northern spotted owl and the barred owl are protected species under the MBTA. Thus, any permits issued for the removal of barred owls as part of the FHCP are subject to the permitting requirements of the MBTA and its implementing regulations.

C. The FHCP violates the ESA and MBTA, and the DEIS is arbitrary and fails to meet the requirements of NEPA.

1. The DEIS and Draft FHCP inappropriately assume that barred owl removal is an effective strategy to mitigate harm to NSOs based on preliminary and inconclusive evidence.

First and foremost, the DEIS presents the agency and the public with a fundamentally biased set of alternatives from which to choose for the proposed action. Barred owl removal is included only as part of the preferred alternative/planned action of the FHCP, which significantly reduces habitat protections for the northern spotted owl, and not as part of Alternative A or Alternative B. However, the additional protections for the fisher (*Pekania pennanti*), Sonoma tree vole (*Arborimus pomo*), and red tree vole (*Arborimus longicaudus*) are also included only under the proposed FHCP and not under either Alternative A or Alternative B. It is fundamentally unfair that protections for these species seem to be offered as a consolation for the reduced protections provided to the northern spotted owl.

Secondly, the inclusion of the barred owl removal in the FHCP seems intended to offset the substantial reductions in habitat protection, though FWS fails to state this outright in the DEIS. Instead, FWS focuses only on the projected benefits to northern spotted owl populations as a result of barred owl removal. In doing so, FWS presents the conclusions of Diller et al. (2014) and Diller et al. (2016) as conclusive information showing large-scale and long-term barred owl removal to be an effective conservation strategy, when in fact these were merely preliminary results from the removal of 81 barred owls over three years in a localized area. The DEIS completely fails to disclose, discuss, and analyze the fact that the larger barred owl removal experiment currently being undertaken by FWS is still

inconclusive and ongoing. Indeed, FWS has recently cited the pressing need for the efficient completion of the barred owl removal experiment, to gain information for "its potential contribution to a long-term barred owl management strategy," as its justification for entering into several Safe Harbor Agreements to conduct removals of barred owls across private timberlands in Oregon. FWS provides no rationale or discussion in the DEIS of how it can conclude that it is reasonable to implement a 50-year-long barred owl removal strategy as part of the "conservation plan" required for the Green Diamond incidental take permit when the agency itself is still investigating the efficacy of barred owl removal as a strategy and has reached no conclusions on its expected long-term effects.

Perhaps even more importantly, the FHCP and DEIS fail to disclose that Green Diamond has been seeking to use barred owl removal as the basis of an HCP (so that it may harvest more timberlands) since 2010, before any results from its preliminary experimental removal had even been obtained. *See* 75 Fed. Reg. 19994 (April 16, 2010). Green Diamond's General Counsel and Vice President Galen Schuler admitted as much when he detailed the novel HCP approach that Green Diamond was developing in cooperation with FWS in a presentation to the American Bar Association Section on Environment, Energy, and Resources back in 2014.[2] The predetermined intent to enter into such an FHCP relying on barred owl removal calls into serious question FWS's objectivity when evaluating evidence for barred owl removal as a conservation strategy here.

2. The DEIS and Draft FHCP fail to demonstrate compliance with the MBTA and claim to use different and inconsistent regulatory provisions of the MBTA to authorize barred owl removal.

The DEIS states that one of the purposes of the proposed action is to "[i]ssue a Migratory Bird Scientific Collecting Permit (50 *Code of Federal Regulations* [CFR] 21.23) under the MBTA in support of research to determine whether removal of barred owls can be scaled up to the Plan Area level for the benefit of NSO." DEIS at 1-2. The DEIS repeatedly refers to this as a "Scientific Collecting Permit" within its discussion of the proposed action. *See, e.g.*, DEIS at 2-9, 2-12. The FHCP, however, states that take of barred owls will be authorized using an MBTA Special Purposes Permit. DFHCP at 1-5; *see also* DEIS Appendix B at B-1. These permits, unlike scientific collecting permits, are issued under a separate regulation at 50 C.F.R. § 21.27. This regulation carries a specific requirement that applicants for such permits must "make[] a sufficient showing of **benefit to the migratory bird resource**, important research reasons, reasons of human concern for individual birds, or other compelling justification." *Id.* (emphasis added). The Draft FHCP, as it stands, simply states that it "supports Green Diamond's application to [FWS] for an MBTA Permit" and does not specify under which regulatory provision Green Diamond is seeking a permit nor provide any such showing of the compelling justification for the permit to be issued. DFHCP at 1-6.

[2] *See,* Galen Schuler, *Take for Incidental Take's Sake*, American Bar Association (Oct. 10, 2014), https://www.americanbar.org/content/dam/aba/events/environment_energy_resources/2014/10/22nd-fall-conference/course_materials/13-schuler_galen-paper.authcheckdam.pdf

In fact, the FHCP provides just the opposite—reasons why an MBTA Permit is neither compelled nor justified as a component of the FHCP. The FHCP specifically states that "FHCP approval and ITP issuance and implementation are not contingent upon an MBTA Permit, because this FHCP NSO conservation program minimizes and mitigates take to the maximum extent practicable without an MBTA Permit." DFHCP at 1-20. Thus, if FWS issues any sort of MBTA permit on the basis of the information provided in the draft FHCP and DEIS alone, it will clearly violate both the procedural requirements of MBTA permitting and potentially the substantive requirements of 50 C.F.R. § 21.27.

3. The FHCP fails to minimize and mitigate impacts to the northern spotted owl and significantly reduces the habitat protections of the NSO HCP.

At the time the NSO HCP was approved, 13,243 acres of land in the NSO HCP Plan Area were designated for protection within 40 no-harvest set-aside reserves. DEIS at 2-7.[3] The size of these set-asides ranged from 60 acres to 2,000 acres each. *Id.* Additionally, Green Diamond further committed in the original NSO HCP to not take any northern spotted owls within a 36,500-acre conditional-harvest Special Management Area.[4]

Under the new FHCP, Green Diamond has dramatically reduced its habitat conservation commitment. The 13,243 acres of protected set-aside reserves have been effectively eliminated. Instead, a mere 3,776 acres are to be designated as no-harvest, no-take dynamic core areas (DCAs). DEIS at 2-11. The DEIS tries to supplement this number and downplay this dramatic cut in habitat protections by stating that no harvest would occur around 233 acres of habitat around each site, amount to 10,252 acres around 44 sites, since the sites are designated as "no-take." *Id.* However, if these sites are indeed active, as the FHCP says they will be, then this is substantially less protection than the sites would receive ordinarily under the ESA. The FHCP specifies that 89 acres of nesting habitat (which it has previously defined as stands aged 46 years and older) must be maintained for each DCA (DFHCP at 5-22–5-23), but the DEIS does not specify that this must be nesting habitat of a certain age (DEIS at 2-11) and describes the DCAs as being only 85 acres on average (DEIS at 4-44). Likewise, the DEIS states that "timber harvest would not occur unless at least 233 acres of habitat exists around the site" but does not specify what sort of habitat this must be (*e.g.* nesting, which is ≥ 46 years old, or nesting/roosting, which is ≥ 31 years old) nor how large of an area "around the site" is used in this determination. DEIS at 2-11. Though the FHCP, like the NSO HCP before it, seems to require that at least 233 acres of nesting/roosting habitat (*i.e.* 31+ years old) be maintained within a 0.5-mile radius of an owl site (a 502-acre area), this is still typically less protective than the default ESA requirement that 512 acres of nesting/roosting (31+) habitat and 204 acres of roosting

[3] Though the number of set-asides has changed from 39 to 40 after one set-aside was split in 2009, this total acreage has not changed. DEIS at 2-7, n.8.
[4] The size of this Special Management Area has subsequently reduced to 18,566 acres due to land divestments by Green Diamond.

(46+) habitat be maintained within the 985-acre area within a 0.7-mile radius of the owl site. *Compare* DFHCP at 5-29 *with* DEIS at 2-7. Regardless, the DEIS's failure to describe the DCAs and their impact on allowable take via habitat destruction is inexcusable and calls into question the reliability of any FWS's analyses and conclusions regarding the same. *See, e.g.*, DEIS at 4-44 (chart comparing NSO HCP set-asides with FHCP DCAs); DEIS at 4-45–4-46 (comparison of potential impacts failing to compare total acreage of habitat and number of NSO pairs authorized to be taken under each alternative).

In essence, rather than making any real habitat conservation commitments in its new FHCP, Green Diamond is now proposing to use its model for evaluating take on Matrix Lands under the NSO HCP and merely commit not to take any spotted owls on at least 44 of these sites under the FHCP. By contrast, Alternative A would commit Green Diamond to preserve 72,000 acres as no-harvest, no-take reserves. DEIS at 2-24. The DEIS fails to provide the total amount of habitat that would be expected to be preserved under Alternative B and hinders the public's ability to meaningfully compare these choices. *See also* DEIS at 4-45–4-46.

In short, FWS cannot reasonably find that Green Diamond will, to the maximum extent practicable, minimize and mitigate the impacts of incidental taking as required by the ESA.

4. The DEIS fails to accurately describe and analyze the impacts of incidental takes authorized by the FHCP, and fails to take a hard look at the environmental impacts of the FHCP.

Green Diamond has requested coverage for incidental take (within the Plan Area) at a rate of 3 NSO sites per year per 100 active NSO sites if there are 100 or more active sites, 2 NSO sites per year per 100 active sites if there are 75 to 100 active sites, or 1 NSO site per year per 100 active sites if there are 48 to 74 active NSO sites. DFHCP at 6-14. The DEIS fails to accurately describe or analyze this authorized take, which it describes as "3 NSO sites per year if there are 100 active NSO sites, 2 NSO sites per year if there are 75 to 100 active sites, or 1 NSO site per year if there are 48 to 74 active NSO sites." DEIS at 2-9. The text of the FHCP itself, however, explains that this is to be understood as a **rate** of take, not a nominal number of allowed takes. So, using the example provided in FHCP, if there are 150 NSO sites, then using a rate of 3 takes per year per 100 sites, this yields a total of 4.5 allowed takes per year, which Green Diamond will round up to 5 sites, or 10 adult NSOs. DFHCP at 6-14. Because there were in fact 166 active sites known to occur within the Plan Area as of 2015, this potentially has very large consequences on the total number of takes to be allowed, as it would increase the hypothetical number of total takes over the 50-year FHCP period from a maximum of 300 adult NSOs to 500 adult NSOs, or more if the number of sites increases over the term of the permit. DFHCP at 6-14.

Compared to the total of 100 adult NSOs that Green Diamond was allowed to incidentally take over the 30-year term of its last NSO HCP, these numbers are preposterous and cannot be supported without a strong showing of evidence from FWS as to why Green Diamond's

last HCP was overly protective and why NSO populations have recovered to such an extent that they can currently withstand authorized take at these significantly higher levels. Presumably, FWS has made no such showing and provided no such explanation in the DEIS because the facts simply cannot support it. Regardless, FWS's failure to recognize and analyze true extent of the proposed incidental takes in the DEIS renders the DEIS both legally deficient under the APA and NEPA, and practically useless as a document that is intended to inform the agency and the public of the environmental impacts of the proposed action. To the contrary, the DEIS fails to take a hard look at the environmental impacts of the proposed actions as required by law.

5. Green Diamond's monitoring activities under the FHCP are insufficient to ensure that northern spotted owl populations are not being appreciably harmed by the FHCP, and the DEIS fails to analyze this.

Under the current NSO HCP, "Green Diamond is obligated to conduct a broad-based NSO monitoring research program that includes monitoring and banding NSOs to facilitate population estimates, determine demographic information, assess NSO habitat selection, and evaluate key prey species for NSO." DEIS at 2-8. Green Diamond is also obligated to "conduct[] surveys for NSOs within a harvest area defined in a [timber harvest plan], including a 0.5-mile buffer around this defined harvest area . . . to determine if take of owls is anticipated." DEIS at 2-6.

Under the proposed FHCP, however, Green Diamond proposes to shed itself of its monitoring obligations. Rather than actually conducting site occupancy surveys to maintain a census of northern spotted owls across the Action Area, Green Diamond instead states that it will prepare a "multi-state site occupancy model" that will allow it to use habitat conditions as a proxy for site occupancy. DEIS at 2-12. Notably, Green Diamond does not plan to use any comparison of expected versus observed occupied NSO sites with successful nesting as a requirement for validating its model's accuracy. *Id.* Additionally, the DEIS is frequently unclear in its terminology and fails to distinguish between the "habitat fitness model" and the "multi-state site occupancy model."

The use of an unvalidated proxy is particularly alarming in light of the fact that Green Diamond's proposed take allowances are contingent on the number of occupied active NSO sites. *See* Part C.4, supra. Thus, it is in Green Diamond's financial interests as a for-profit corporation to manipulate its model and/or harvest practices to overestimate the number of active NSO sites present, thereby allowing it to take more NSO sites and produce more timber. Though Green Diamond has stated that "site occupancy surveys will continue throughout the Plan Area," it has in the same breath said that only "at least 20 percent of the potential NSO take sites will be monitored annually." DEIS at 2-12. Additionally, the FHCP itself says that annual monitoring of active sites would only continue "[d]uring the initial period" of the FHCP. Draft Forest HCP at 6-14. In fact the FHCP plainly reveals that after Green Diamond has "validated" its site occupancy model, "the number of NSO sites present within the Plan Area will no longer be directly determined by annual 100%

surveys of all NSO sites in the Plan Area, but will instead be determined most likely based on the site occupancy model that is scheduled to be developed following approval of this FHCP." *Id.* at 6-22. The DEIS is also inconsistent in its timeline of whether these models can be expected to be validated within the first ten years of the FHCP or only after the first ten years of the FHCP. *See* DEIS at 2-12–2-17. This is additionally problematic because the model-based proxy could also presumably be used in the future (after model validation) instead of direct surveys to measure NSO population levels for purposes of assessing whether or not adaptive management should be triggered under the FHCP. DEIS at 2-19. If the models are validated before the ten-year mark, then this could cause a "red light" trigger to go undetected. *See* DEIS at 2-19.

Both the FCHP and the EIS must state with more specificity where exactly demographic site monitoring will be maintained and where it will be discontinued. The EIS must disclose and analyze the impacts of the fact that this model-based proxy method will be used to both relieve Green Diamond of its important contributions to regional demographic survey data and to relieve Green Diamond of the monitoring obligations that are core to ensuring compliance with its incidental take allowance under the issued permit. This proxy-based monitoring method, in which Green Diamond, not FWS, is empowered to dictate both the methodology and the implementation, is not sufficient to ensure that an accurate monitoring of the HCP or its efficacy is occurring.

CONCLUSION

To fulfill the requirements of the MBTA, the ESA, and NEPA, FWS must address the numerous concerns detailed in this letter. FWS should also issue a revised DEIS and provide additional analysis to the public before approving the proposed FHCP or any alternative action. Additionally, Friends of Animals urges FWS to consider new alternatives that do not rely on barred owl removal for conservation and adequately conserve northern spotted owl habitat while also furthering Green Diamond's ongoing data collection and efforts to better understand the influence of habitat and prey availability on NSO survival, site occupancy, and fecundity.

Please inform me of FWS's final decision on these permits and FHCP and contact me if you have any questions or concerns.

Sincerely,

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